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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/726,075

11/29/2000

Peter Gansen

64251-006

9638

30743

7590

02/04/2009

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EXAMINER

COONEY, JOHN M

ART UNIT

PAPER NUMBER

1796

MAIL DATE

DELIVERY MODE

02/04/2009

PAPER

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1 RECORD OF ORAL HEARING

2
3 UNITED STATES PATENT AND TRADEMARK OFFICE

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6 BEFORE THE BOARD OF PATENT APPEALS
7 AND INTERFERENCES

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10 Ex parte PETER GANSEN
11 and MASSIMO LOSIO

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14 Appeal 2008-5758
15 Application 09/726,075
16 Technology Center 1700

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19 Oral Hearing Held: Thursday, January 15, 2009
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22
23 Before BRADLEY R. GARRIS, MICHAEL P. COLAIANNI, and
24 JEFFREY B. ROBERTSON, Administrative Patent Judges

25
26 ON BEHALF OF THE APPELLANTS:

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1 The above-entitled matter came on for hearing on Thursday,
2 January 15, 2009, commencing at 10:25 a.m., at the U.S. Patent and
3 Trademark Office, 600 Dulany Street, Alexandria, Virginia, before
4 Ashorethea Cleveland, Notary Public.

5 THE USHER: Calendar Item Number 35, Mr. Whitham.

6 JUDGE GARRIS: Good morning, Mr. Whitham.

7 MR. WHITHAM: Good morning.

8 JUDGE GARRIS: Sir, as you know, you have about 20
9 minutes. Please begin. If you have a card, would you please give it to our
10 court reporter?

11 MR. WHITHAM: Card.

12 JUDGE GARRIS: Thank you, sir. We are generally familiar
13 with the issues in this appeal. We've discussed them previously. So, with
14 that in mind, please begin.

15 MR. WHITHAM: No trouble.

16 The case is about and what is claimed is a seat cushion. This is
17 a seat cushion that I brought in to an Examiner's interview in 2006. The
18 important features are that it has a covering material which can be a textile
19 and on the inside it has a molding and the molding is composed of two
20 different polyethylenes, one as a foam and one as a gel.

21 The concept was that by combining the two into a single
22 molding you get the benefits of a polyurethane gel which is a damping type
23 of property and you would also get the benefits of a polyurethane foam when
24 you get some spring back to it. It gives you a better seat cushion.

1 There are five claims in the case. Claim 70 is the independent
2 claim. I argued 70, 73 and 74 independently although I will stick with 70 for
3 today.

4 The chief reference in the case is US Patent 44013, Kenndoff.
5 The claims have all been rejected separately either as anticipated by
6 Kenndoff or as being obvious under Kenndoff.

7 Kenndoff's reference is drawn to a wound dressing and the
8 concept behind Kenndoff is to have a polyurethane material that will stick to
9 the skin but not to the wound. The idea is, it will be able to absorb wound
10 exudate but still stay on the skin. Several times it repeats through how it
11 makes this material. One of the important features is on column five at lines
12 31 and following. It does say that the conditions defined above are essential;
13 otherwise you end up with a non-stick, elastic gel.

14 So, clearly what he's looking for is something that will work on
15 a wound and it will bind to wound exudate, that will absorb the wound
16 exudate.

17 You can see in the background section he does talk about prior
18 art, materials that would dissolve in water, and he talks about some that were
19 crosslinked so they didn't absorb water.

20 So, that was the problem that he was addressing. He was not
21 addressing any characteristics where you have a spring and a damper type
22 characteristic in a molding.

23 Also, the important feature that I've highlighted is: The thing
24 that does this is the polyurethane gel itself.

25 The feature that the Examiner has focused most attention on is
26 in column ten. He cites ten to 24, reliance in column ten. This talks about a

1 backing material. I think that if you look right above that, lines six to nine
2 and lines 25 to 31, that the important features are in -- in this embodiment of
3 Kenndoff, you've got a backing material. The backing material could be a
4 polyurethane sheet. The idea is that I get a material; I put my specialized
5 polyurethane that absorbs and sticks to the wound on it, and then I can put it
6 on the wound. Okay.

7 With reference to the claim, we have essentially three elements
8 that had a division point. We require a covering material. We require a
9 multi-layered polyurethane molding. It's got to have both a gel and the foam
10 layer and there must be a bond between the two, of the urethane and the gel
11 and the foam.

12 Now, if the Examiner's contention is correct that even though
13 this is not a seat cushion this would make the claims anticipated which
14 would be -- you know, we specify seat cushion or it would make them
15 obvious.

16 The problem is, he's totally missing one of the elements then
17 because you either have a backing material plus the specialized Kenndoff gel
18 that sticks but you don't have a multi-layered polyurethane molding, so that
19 the backing material is supposed to be equivalent to the covering material
20 and the claim is at issue, claim 70. Then he lacks the polyurethane gel layer
21 and polyurethane foam layer and the multi-layer foam.

22 Now, if the backing material is somehow supposed to be part of
23 the molding then he lacks the covering material which is specified in the
24 claim.

25 That I think is the principal argument other than the main
26 argument that this is a seat cushion. This is a wound dressing. They are not

1 for the same purposes. They do not solve the same problem and they don't
2 perform in the same way.

3 If there is anything else I can add to it, I --

4 JUDGE GARRIS: Judge Colaianni, any questions?

5 JUDGE COLAIANNI: No questions.

6 JUDGE GARRIS: Judge Robertson?

7 JUDGE ROBERTSON: No questions.

8 JUDGE GARRIS: From your brief and from your argument
9 today, we understand the issues of this appeal.

10 We thank you very much for coming and discussing this.

11 MR. WHITHAM: Thank you very much.

12 Whereupon, at approximately 10:32 a.m., the proceedings were
13 concluded.